IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 803 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD

Versus

BHIKHABHAI DUDABHAI JADAV

Appearance:

MR SUNIT S SHAH & Mr S V Raju for Petitioner

MR AMITKUMAR C BHATT for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/02/2001

ORAL JUDGEMENT

This is an appeal under section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 13.10.1998 recorded by the learned Motor Claims Tribunal (Aux.) Junagadh in Motor Accident Claims Petition

No.208/90 under which the learned tribunal was pleased to direct the present appellant-Insurance Company to pay to the original claimant, compensation of Rs.30,440/- with interest at 12% per annum from the date of petition till the date of payment. The contesting respondent no.1 suffered a motor accident on 17.7.1989 at 4.40 p.m. when he was travelling in a rickshaw No.GTW 9119. The rickshaw met with an accident and, therefore, the said respondent sustained injuries and permanent disablement. The first respondent preferred the aforesaid claim petition before the tribunal concerned. After hearing the parties, the tribunal came to the decision that the accident took place on account of rash and negligent driving on the part of the driver of the said vehicle. That on appreciation of the evidence before it, the tribunal came to the conclusion that the first respondent was entitled to claim compensation and that the appellant as well as the other respondents were jointly and severally responsible and liable to pay it to the first respondent. Accordingly, the award was made by the tribunal.

2. Feeling aggrieved of the said judgment and award the appellant has preferred this appeal before this court. It has been mainly contended here that the vehicle involved in the accident was a goods vehicle in which the first respondent was travelling as illegal passenger and that therefore, his risk was not covered by the contract of insurance. Therefore, the insurance company was not responsible and liable to indemnify the owner and therefore, the appellant was not responsible and liable to pay compensation to the first respondent. Therefore, the appeal be allowed and the judgment and award against the appellant may be set aside.

3. The appeal was admitted. Mr Amitkumar C Bhatt, learned Advocate appeared for respondent no.1. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate appearing on behalf of the appellant has argued at length that the first respondent was travelling as illegal passenger in goods vehicle and, therefore, the insurance company is not responsible and liable to pay any amount of compensation to the first respondent.

4. The main hurdle in the way of the present appellant is that there is no permit produced before the tribunal to show that the vehicle involved in the accident was a goods vehicle permitted to carry goods only and not passenger. The second obstacle in the way of the present appellant is that there is no evidence on

record of the tribunal to show that the owner of the vehicle knew that the said goods vehicle was used for carrying passengers illegally. On this aspect of the case, it would be worthwhile to refer to a decision of this court rendered by the Full Bench in the case of New India Assurance Com. v. Kamlaben (1993 (1) GLH 961. The relevant observations of the said decision may be reproduced hereunder:

"It is held that the insurer, in order to successfully disclaim his liability on the ground mentioned in Sec.86(2) (b) has to establish:

(i) "that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for hire or reward,

(ii) that there was a specific condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or reward.

(iii) that the vehicle was, in fact was used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward, and

(iv) that the vehicle was used by the insured or at his instance in breach of specific conditions including a condition that in the goods vehicle passengers for hire or reward were not to be carried. If it is done without knowledge of the insured by the driver's acts or omission, the insurer would be liable to indemnify the insured."

The aforesaid observation and final conclusion rendered by the said Full Bench of this court is very clear. It says that the said fact of carrying of passengers must be within the knowledge of the owner of the vehicle. It is also observed that if it is done within the knowledge of the insured, by the driver, the insurer would be liable to indemnify the insured. In the present case, there is no evidence on record to show that the passenger was carried in goods vehicle within the knowledge of the owner of the vehicle.

In view of the aforesaid binding decision, the Insurance Company will still be responsible and liable to indemnify

the owner. In that view of the matter, there is no merit in this appeal and the same deserves to be dismissed. This appeal is accordingly dismissed. No order as to costs. The judgment and award of the learned tribunal are hereby confirmed.

15.2.2001 [D P Buch, J.]
msp